

# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1665

UNITED STATES OF AMERICA, PETITIONER,

v.

DOUGLAS B. CARTWRIGHT, as Executor of the  
Estate of ETHEL B. BENNETT

AN WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

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IN THE  
**United States District Court**

**FOR THE WESTERN DISTRICT OF NEW YORK**

**Civil No. 1968-164**

**DOUGLAS B. CARTWRIGHT, as Executor of the Estate  
of ETHEL B. BENNETT,**

*Plaintiff,*

**v.**

**UNITED STATES OF AMERICA,**

*Defendant.*

**Docket Entries.**

**Civ-1968-164 Douglas B. Cartwright, etc. v. US.**

**Date**

**Proceedings**

**1968**

May 14	Filed Complaint
May 14	Issued summons & 4 copies
May 14	JS 5 made
May 21	Filed summons—served 5/16/68
July 11	Filed Deft's Answer
July 22	Filed Pltf's. Note of Issue—Nov. 1968 Term
Aug. 21	Filed Pltf's. Note of Issue—Nov. 1969 Term
Nov. 13	Filed Deft's. Answers to Pltf's. Request for Admissions
Dec. 9	Pretrial Conference (JTC).

## Date

## Proceedings

1970

- Feb. 27 Pretrial Conference (JTC).  
 Apr. 3 Trial before Judge Curtin. Submitted  
 Oct. 16 Filed Court Reporter's Proceedings of 4/3/70  
 Dec. 10 Filed Henry S. Fraser's Affidavit & Notice of  
 Motion for leave to appear as *amicus curiae* -  
 ret. 12/17/70.

1971

- Feb. 22 Filed Decision & Order that judgment be entered  
 in favor of Pltf.—Curtin, J. (notice & copy to  
 Messrs. Gregg; Walters, Asst. Atty. Gen. Wash-  
 ington, D. C. & Schroeder).  
 Feb. 22 Filed Pltf's. Admissions as requested by Pltf., &  
 as revised by Deft., in his answer to the request  
 (illegible).  
 Apr. 16 Filed Judgment in favor of Pltf. in amount of  
 \$2,699.41 with interest at 6% and costs—Curtin,  
 J. (notice to Mr. Gregg).  
 Apr. 16 JS 6 made.  
 May 21 Filed Deft's. Notice of Appeal (copy mailed to  
 Mr. Gregg).



**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**Docket No. 71-1542**

**[Caption omitted.]**

**RELEVANT DOCKET ENTRIES**

DATE	FILINGS—PROCEEDINGS	FILED
6-1-71	Filed record (original papers of district court)	# _____
11-4-71	Argument heard (by: Waterman, Smith & Timbers CJJ)	
3-27-72	Judgment Affirmed, Waterman, CJ	
3-27-72	Filed judgment	
4-26-72	Issued Mandate (opinion, judgment & statement of costs)	
6-26-72	Filed notice of filing of petition for writ of certiorari	(71-1665)

## Complaint.

[Caption omitted.]

(Filed May 14, 1968)

The plaintiff, appearing herein by his attorneys, Albrecht, Maguire, Heffern & Gregg, for his complaint against the defendant, alleges as follows:

**FIRST:** That this action is brought for the recovery of an estate tax under Section 1340 and Section 1346, Title 22, of the United States Code.

**SECOND:** That the plaintiff is the executor of the Estate of Ethel B. Bennett, who died on December 4, 1964, a resident of the Village of Alden, New York, the plaintiff having been duly appointed executor of said estate by the Surrogate of the County of Erie on the 6th day of January, 1965.

**THIRD:** That on or before the 4th day of March, 1966, the plaintiff, as executor of said estate, filed the federal estate tax return with the District Director of the Internal Revenue Service at Buffalo, New York, and paid the tax shown to be due thereon.

**FOURTH:** That said federal estate tax return reported numerous mutual funds or investment trust securities as being owned by said estate and subject to federal estate tax at values based upon the quoted prices at which they could have been sold on or about the valuation date.

**FIFTH:** That on or about the 20th day of November, 1967, the District Director of the Internal Revenue Service at Buffalo, New York, made a determination that said investment trust securities were includible in the gross estate for the purposes of the estate tax at values based upon prices the executor would have had to pay to purchase as many additional shares on the valuation date.

**SIXTH:** That this computation resulted in a valuation amounting to \$8,925.27 in excess of the price at which such shares could have been sold on the valuation date.

**SEVENTH:** That the addition of \$8,925.27 to the taxable estate at the 30% rate resulted in an additional estate tax amounting to \$2,677.58, subject to adjustment for state death taxes in the sum of \$214.21, or a net sum of \$2,463.37.

**EIGHTH:** That on or before the 4th day of March, 1966, plaintiff paid the defendant the sum of \$28,248.80; on or about the 6th day of October, 1967, the plaintiff paid the defendant the further sum of \$11,635.37 as additional estate taxes; said total of \$44,884.17 of estate taxes including the amount assessed on the higher valuation of said investment trust securities.

**NINTH:** That on or about December 5, 1967, plaintiff filed with the defendant a claim for refund in the sum of \$3,092.59, subject to adjustment for state death taxes as stated in the claim for refund. A copy of said claim for refund is attached hereto as Exhibit "A" and hereby made a part hereof.

**TENTH:** That on or about April 29, 1968, the defendant rejected said claim for refund. A copy of this notification from the District Director is attached hereto as Exhibit "B" and hereby made a part hereof.

**ELEVENTH:** That the said sum of \$3,092.59 was illegally, erroneously and wrongfully collected by the defendant from the plaintiff for the reasons hereinafter set forth.

**TWELFTH:** That Section 2031 of the Internal Revenue Code provides that the value of the gross estate shall be determined by including "the value at the time of his death of all property, real and personal, tangible and intangible . . . ."

**THIRTEENTH:** That Reg. Sec. 20.3031-1(b) states that "the value of property includible in decedent's gross estate is . . . its fair market value at the time of the decedent's death . . ." and that "the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

**FOURTEENTH:** That the investment trusts, by quoting a price at which they are willing to purchase said shares each day, constitute a "willing buyer" and the tens of thousands of shares that are purchased by them each day show that this is the price at which willing sellers are willing to sell.

**FIFTEENTH:** That the price the plaintiff would have had to pay to purchase as many additional shares of all of the investment trusts owned by said estate on the valuation date is not a proper factor to be considered in determining the value of the shares it already owned.

**SIXTEENTH:** That although repayment of the said estate taxes and interest in the amount of \$3,092.59 has been duly demanded with interest thereon from the date of payment, no part of said sum has been remitted or refunded and the full sum of \$3,092.59 with interest thereon at the rate of 6% per annum from the date of payment thereof, subject to the adjustment previously noted, is due and owing to the plaintiff from the defendant.

WHEREFORE, the plaintiff demands judgment against the defendant for the sum of \$3,092.59 with interest on \$2,677.58, as adjusted for state death taxes from the 7th day of October, 1967, together with the costs and disbursements of this action.

**ALBRECHT, MAGUIRE, HEFFERN &  
GREGG,**

By **RALPH J. Gannon,**  
*Attorneys for Plaintiff,*  
**1900 Liberty Bank Building,**  
**Buffalo, New York 14202.**

---



**Answer.**

[Caption omitted.]

(Filed July 11, 1968)

The defendant, by its attorney, Thomas A. Kennelly, Acting United States Attorney for the Western District of New York, answers the plaintiff's complaint as follows:

1. The defendant admits the allegations contained in paragraph 1 of the complaint.

2. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. The defendant admits the allegations contained in paragraph 3 of the complaint.

4. The defendant admits the allegations contained in paragraph 4 of the complaint.

5. The defendant admits the allegations contained in paragraph 5 of the complaint.

6. The defendant admits the allegations contained in paragraph 6 of the complaint.

7. The defendant denies the allegations contained in paragraph 7 of the complaint.

8. The defendant admits the allegations contained in paragraph 8 of the complaint.

9. The defendant admits the allegations contained in paragraph 9 of the complaint, except avers that the claim for refund was filed on or about December 6, 1967, and denies any statements contained in said Exhibit "A" unless otherwise specifically admitted herein.

10. The defendant admits that Exhibit "E" is a copy of a letter sent to plaintiff by the District Director but denies that said letter constitutes a formal notice of disallowance.

11. The defendant denies the allegations contained in paragraph 11 of the complaint.



12. The defendant admits the allegations contained in paragraph 12 of the complaint, except alleges that the proper wording of Section 2031 is "real or personal" instead of "real and personal."

13. The defendant admits the allegations contained in paragraph 13 of the complaint.

14. The defendant denies the allegations contained in paragraph 14 of the complaint.

15. The defendant denies the allegations contained in paragraph 15 of the complaint.

16. The defendant denies the allegations contained in paragraph 16 of the complaint.

WHEREFORE, the defendant demands that the plaintiff's complaint be dismissed and that judgment be entered for the defendant.

.....,  
*United States Attorney.*

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**Admissions as Requested by Plaintiff and as Revised  
by Defendant in his Answer to the Request.**

[Caption omitted.]

(Filed February 22, 1971)

Set forth below, as an aid to the Court, are the statements which the plaintiff requested the defendant to admit as being true for the purposes of this action only and subject to all pertinent objections as to admissibility which might be interposed at the trial.

Some of these statements were admitted without change, some with qualifications. The qualifications requested by the defendant are shown below in (parentheses):

1. Redeemable shares of open-end investment companies have been subject to tax in estate subject to the federal estate tax since at least the year 1941, following the enactment of the Investment Companies Act of 1940.

2. At least until the year 1961, the Internal Revenue Service accepted the net asset value or bid price as the value of such shares for estate tax purposes. (Prior to issuance of Treasury Decision 6680, C. B. 1963-2, 417, the Internal Revenue Service had no fixed position or policy on the valuation of shares in an open-end investment company. Some District Directors' offices accepted the "mean" price; others the "bid" price; and possibly others required the use of the "asked" or public offering price. See also Rev. Proc. 64-18, C. B. 1964-1, 681.)

3. In or about the year 1962 Revenue Agents began to assess deficiencies in estate tax unless such mutual fund shares were reported at the mean between the bid price and the public offering or asked price. (This did not necessarily reflect a uniform policy of the Internal Revenue Service. Prior to the issuance of Treasury Decision 6680, C. B. 1963-2, 417, the Service had no fixed position or policy on the valuation of shares in an open-end investment company.)

4. On or about the 5th day of June, 1962, the Commissioner caused notice to be published in the Federal Register of his proposal to issue a regulation under Section 2031 of the Internal Revenue Code of 1954 that mutual funds should be valued at their replacement cost. Said notice announced that a hearing would be held on July 25, 1962, in the Internal Revenue Building at Washington, D. C.

5. The publication described in Paragraph 4 above was the first time the Internal Revenue Service had officially proposed to value mutual fund shares at replacement cost instead of at the liquidating value or bid price.

6. The proposed regulation was adopted by a Treasury Decision (6680) effective as to decedents dying on or after October 11, 1963.

7. Meanwhile, hundreds of proceedings were pending in District Directors' offices, Regional Commissioner's offices, the Tax Court and United States District Courts throughout the country in which executors were protesting the valuation of mutual fund shares either at the asked price or at the mean between the bid and asked price. (The defendant does not believe the pending proceedings would have numbered in the hundreds).

8. Included among the pending cases was an action commenced in the United States District Court for the Western District of New York by Robert M. Wink as Executor of the Estate of Addie G. Baldwin against E. C. Coyle, Jr. (District Director of Internal Revenue at Buffalo, New York) (Civil No. 9864) on August 23, 1962, to recover \$3,090.95. This was the amount of estate taxes collected by the District Director on the grounds that mutual funds owned by the decedent (as of April 2, 1960) should be valued at the mean between the bid and asked prices. The amount of refund, adjusted for the credit of State death duties and interest to the date of payment, was \$2,986.24. On January 14, 1963, the Assistant Attorney General in charge of the Tax Division of the Department of Justice authorized and directed the Chief Counsel of the Internal Revenue Service to refund to the plaintiff the amount he would have received (other than costs) had he prevailed in the litigation. On March 29, 1963, the Internal Revenue Service paid to the plaintiff the said sum of \$2,986.24 with interest.

9. Also included among the pending cases was an action commenced in the United States District Court for the Western District of New York by Martha A. Metz as Executor of the Estate of Ethel Louisa Stern v. E. C. Coyle, Jr. (District Director of Internal Revenue at Buffalo, New York) (Civil No. 10,167) on March (8), 1963. This was an action to recover (\$2,840.28) of estate tax (subject to adjustment for the credit for state death taxes) collected by the District Director on the grounds that the mutual funds owned by the decedent (on February 22, 1961) should be valued at the "asked" price. On May 28, 1963, the Assistant Attorney General in charge of the Tax Division of the Department of Justice authorized and directed the Chief Counsel of the Internal Revenue Service to refund to the plaintiff the amount plaintiff would have received (other than cost) had she prevailed in the litigation. On August 9, 1963, the Internal Revenue Service paid to the plaintiff the said sum of (\$2,840.28) with interest.

10. Also included among the pending cases was an action commenced in the United States District Court for the Middle District of Florida by Thomas Wilder and Horace D. Reigle, as Executors of the Estate of Charles M. Wilder against Laurie W. Thomlinson (District Director at Jacksonville, Florida) on October 11, 1963. One of the issues involved the sum of \$18,619.98. This was the amount of estate taxes collected by the District Director on the grounds that the mutual funds owned by the decedent (on May 16, 1955) should be valued at the price the executor would have had to pay to purchase as many additional shares on the valuation date, i.e., the asked price. The amount of refund adjusted for the credit for state death duties was \$18,619.98. The claim involved another issue as to the value of real estate. On July 9, 1964, the Assistant Attorney General in charge of the Tax Division of the Department of Justice notified the plaintiffs that:

"(1) As to issue No. 1—*Valuation of Investments in Mutual Funds*. The government recede and accept valuation of such securities on the basis originally adopted by the executors (i.e. quoted prices at which such securities could have been sold on the valuation date), refunding to the Estate (after adjustment for state death taxes) the net sum of \$18,619.98 together with interest at the statutory rate."

11. In 1964, the Commissioner settled the question in all cases pending involving persons dying on or before October 10, 1963, by instructing all taxpayers and Internal Revenue Service personnel that the Service would not disturb the values at which mutual funds had been reported in those estate (provided that if requested by the District Director, a collateral agreement is furnished by all interested parties that the value so determined would be treated by the executor and all distributees as the tax basis of any shares so valued. Rev. Proc. 64-18, *supra*).

12. The facts which are relevant to the valuation of mutual funds were no different after October 11, 1963, than they had been prior to October 11, 1963. (Defendant denies that) the only significance of the date October 11, 1963, is that this is the date on which the Commissioner formally announced that mutual funds owned by individuals dying before that date should be valued at the bid price, but that mutual funds owned by persons dying after that date should be valued at the asked price.

(Defendant admits that each of the following documents, attached hereto as exhibits, is genuine).



13. Letter dated January 14, 1963, from Department of Justice to Ralph J. Gregg, as Attorney for *Robert W. Wink as Executor of the Estate of Addie G. Baldwin v. E. C. Coyle, Jr.*, Civil No. 9664 (W. D. N. Y.).

14. Letter dated May 28, 1963, from Department of Justice to Ralph J. Gregg as attorney for *Margaret A. Metz as Executrix of the Estate of Ethel Louise Stern v. United States*, Civil No. 10,167 (W. D. N. Y.).

15. Letter dated July 9, 1964, from the Department of Justice to Thomas T. Cobb re *Thomas Wilder and Horace D. Riegle, Executors of the Estate of Charles M. Wilder v. Tomlinson*, Civil No. 63-211-J (M. D. Florida).

.....  
**Attorney for Plaintiff,**  
**2110 Main Place Tower,**  
**Buffalo, New York 14202.**



## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

January 14, 1963

(SEAL)

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

LFO:CMF:MJB:nvl

5-53-1877

Ralph J. Gregg, Esquire,  
Albrecht, Maguire, Heffern & Gregg  
1900 Liberty Bank Building  
Buffalo 2, New York

Re: Robert W. Wink, as executor of the Estate of  
Addie G. Baldwin v. E. C. Coyle, Jr., Civil No.  
9864 (W. D. N. Y.)

Dear Mr. Gregg:

This refers to the above-entitled suit for refund of estate taxes.

This is to advise you that an administrative settlement has been approved on behalf of the Attorney General.

Accordingly, the Chief Counsel, Internal Revenue Service, has been authorized and directed to schedule an overpayment of such tax and assessed interest paid as the Service computes to be due under the issues raised by the pleadings, plus interest according to law. In other words, the overpayment will be in the amount plaintiff would have

received (other than costs) had he prevailed in this litigation. The amount of recovery demanded in the complaint, however, is not controlling, but is subject to the recomputation made by the Service.

Subject to the final paragraph of this letter, the refund check will be sent by the Service to the United States Attorney, Buffalo, New York, for delivery to the taxpayer or to the counsel of record. However, the refund check will not be so delivered until the United States Attorney has received from the taxpayer's counsel of record a stipulation calling for dismissal of the suit with prejudice and with the parties to bear their respective costs. Meanwhile, it is suggested that the stipulation be deposited in his office in order to avoid any delay in the delivery of the check and termination of the litigation at the appropriate time.

If the taxpayer has any unpaid liability in respect of an internal revenue tax, the overpayment resulting from this settlement may be credited in accordance with the provisions of Section 6402, Internal Revenue Code of 1954, and the interest on such overpayment will be allowed according to law.

Sincerely yours,

**LOUIS F. OBERDORFER,**  
Assistant Attorney General,  
Tax Division.

By: **C. MOXLEY FEATHERSTON,**  
Chief, Review Section.

## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

May 28, 1963

(SEAL)

Address Reply to the

Division Indicated

and Refer to Initials and Number

LFO:CMF:MJBurruss:nvl

5-53-2032

Ralph J. Gregg, Esquire

Albrocht, Maguire, Heffern &amp; Gregg

1900 Liberty Bank Building

Buffalo 2, New York

Re: Margaret A. Metz, as Executrix of the Est. of  
Ethel Louise Stern v. United States—Civil No.  
10,167 (DC W. D. N. Y.)

Dear Mr. Gregg:

This refers to the above-entitled suit for refund of estate taxes by Margaret A. Metz as Executrix of the Estate of Ethel Louise Stern.

This is to advise you that an administrative settlement has been approved on behalf of the Attorney General.

Accordingly, the Chief Counsel, Internal Revenue Service, has been authorized and directed to schedule an overpayment of such tax and assessed interest paid as the Service computes to be due under the issues raised by the pleadings, plus interest according to law. In other words, the overpayment will be in the amount plaintiff would have

received (other than costs) had she prevailed in this litigation. The amount of recovery demanded in the complaint, however, is not controlling, but is subject to the recomputation made by the Service.

Subject to the final paragraph of this letter, the refund check will be sent by the Service to the United States Attorney, Buffalo, New York, for delivery to the taxpayer or to the counsel of record. However, the refund check will not be so delivered until the United States Attorney has received from the taxpayer's counsel of record a stipulation calling for dismissal of the suit with prejudice and with the parties to bear their respective costs. Meanwhile, it is suggested that the stipulation be deposited in his office in order to avoid any delay in the delivery of the check and termination of the litigation at the appropriate time.

If the taxpayer has any unpaid liability in respect of an internal revenue tax, the overpayment resulting from this settlement may be credited thereon in accordance with the provisions of Section 6402, Internal Revenue Code of 1954, and the interest on such overpayment will be allowed and paid according to law.

Sincerely yours,

**LOUIS F. OBERDORFER,**

**Assistant Attorney General,  
Tax Division,**

**By: C. MOXLEY FRATHERSTON,  
Chief, Review Section.**

UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D. C. 20530

July 9, 1964

(SEAL)

Address Reply to the  
Division Indicated  
and Refer to Initials and Number  
LFO:AMS:MJBurruss:nvl  
5-17M-396

Thomas T. Cobb, Esquire  
Black, Cobb, Cole and Crotty  
444 North Beach Street  
Daytona Beach, Florida 32015

Re: Thomas Wilder and Horace D. Riegler, Exrs.  
Est. of Charles M. Wilder v. Tomlinson—Civil  
No. 63-211-J (M. D. Florida)

Dear Mr. Cobb:

This refers to your offer dated February 28, 1964, as clarified by letter of March 20, 1964, submitted on behalf of the plaintiffs, to settle the above-entitled case on the following basis:

(1) AS TO ISSUE NO. 1—*Valuation of Investments in Mutual Funds*. The Government recede and accept valuation of such securities on the basis originally adopted by the Executors (i.e. quoted prices at which such securities could have been sold on the valuation date), refunding to the estate (after adjustment for state death taxes) the net sum of \$18,619.98, together with interest at the statutory rate.



(2) AS TO ISSUE NO. 2—*Valuation of Real Estate.*

The District Director and Executors agree to a compromise date of death value for the real estate of \$35,000.00, refunding to the estate the net amount of overpayment of estate tax, based upon the compromise valuation figure, together with interest thereon.

(3) AS TO ISSUE NO. 3—*Interest on Deficiency Assessment.*

Since the refund due the Estate under Items (1) & (2) will exceed the deficiency paid by the Estate on March 27, 1959, interest in the amount of \$1,295.00, paid by the Estate on the alleged deficiency, will be refunded to the Estate, together with accrued interest.

(4) This offer, if accepted, shall be in full settlement of all claims for taxes against the Estate of whatsoever kind and nature, and, specifically, the government will agree that the income tax liability of the estate will not be subject to redetermination by reason of the settlement.

By letter of March 20, 1964 the fourth provision was clarified as follows: The settlement will embrace only those estate and income tax liabilities of the Estate of Charles M. Wilder, deceased, affected by a compromise settlement of the pending suit.

This offer has been accepted on behalf of the Attorney General subject to computation by the Internal Revenue Service of the amount due under the terms of settlement. Accordingly, the Chief Counsel, Internal Revenue Service, is being authorized to schedule an overpayment of such



tax and assessed interest paid as the Service computes to be due under the terms of the settlement, plus interest according to law.

Subject to the final paragraph of this letter, the refund check representing the overpayment will be sent by the Service to the United States Attorney, Jacksonville, Florida, for delivery to the taxpayers or to the counsel of record. However, the refund check will not be so delivered until the United States Attorney has received from the taxpayers' counsel of record a stipulation calling for dismissal of the suit with prejudice and with the parties to bear their respective costs. Meanwhile, it is suggested that the stipulation be deposited in his office in order to avoid any delay in the delivery of the check and termination of the litigation at the appropriate time.

If the Estate of Charles M. Wilder has any unpaid liability in respect of an internal revenue tax, the overpayment resulting from this settlement may be credited thereon in accordance with the provisions of Section 6402, Internal Revenue Code of 1954

Sincerely yours,

LOUIS F. OBERDORFER,  
Assistant Attorney General,  
Tax Division,

By: ABBOTT M. SELLERS,  
Acting Chief, Review Section.

**Stipulation of Facts.**

[Caption omitted.]

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of this case the following statements may be accepted as facts, subject to the right of either party to object to the admission in evidence of such facts on the grounds of materiality or relevancy, and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. At the time of her death on December 4, 1964, Ethel B. Bennett was the owner of shares of open end investment companies or mutual funds as follows:

(a) 2568.422 shares of Investors Mutual, Inc. in her individual name and 2067.531 in her name as trustee for Dorothy B. Cartwright.

(b) 2269.376 shares of Investors Stock Fund, Inc.

(c) 1869.159 shares of Investors Selective Fund, Inc.

2. The executor of her estate reported the value of these shares, for estate tax purposes, at their net asset value or "bid" (redemption) price and paid the estate tax computed on this basis. This value totalled \$124,399.87.

3. The Commissioner of Internal Revenue assessed a deficiency in estate tax on the grounds that the value of these shares, for estate tax purposes, was the "asked" or public offering price. The Commissioner's determination was that these shares were includible in the gross estate

for the purposes of the estate tax at values based upon prices the executor would have had to pay to purchase as many additional shares on the valuation date. This value totalled \$133,325.14.

4. On October 9, 1967, the Commissioner of Internal Revenue assessed a deficiency in estate tax against the Estate of Ethel B. Bennett for \$11,635.37 plus interest thereon of \$1,114.92 for a total of \$12,750.29. The deficiency in tax represented the \$8,925.27 adjustment in the value of the mutual fund shares and other adjustments not in issue in this case. The deficiency in tax was paid on October 9, 1967; the interest on December 27, 1967.

5. On December 6, 1967, the plaintiff filed a claim for refund of federal estate taxes and interest in the amount of \$3,092.59.

6. Investors Stock Fund, Inc., Investors Mutual, Inc. and Investors Selective Fund, Inc. (hereinafter sometimes referred to as "the investment companies") are open-end investment companies registered with the Securities and Exchange Commission, are subject to the regulations of said Commission and are regulated by the Investment Company Act of 1940, 15 U. S. C. § 80a-1, *et seq.* They were organized and are managed by Investors Diversified Services, Inc., Minneapolis, Minnesota. Investors Diversified Services, Inc. is not an open-end investment company. It acts as underwriter in marketing or distributing the shares of the investment companies it has organized and acts as investment manager for them.

7. Shares of these investment companies are marketed and distributed by Investors Diversified Services, Inc. (hereinafter referred to as "IDS") by prospectus pursuant to the Investment Company Act of 1940, the Securities Act of 1933 and the "blue sky" laws of the various states. Copies of the written prospectus issued on October 16, 1964 by Investors Stock Fund, Inc., Investors Mutual Fund, Inc. and Investors Selective Fund, Inc. are attached hereto as Exhibits A, B, and C. It is stipulated that these are true and correct copies of the prospectus by which shares of these investment companies were being offered in the regular course of business as of December 3, 1964.

8. The price at which shares of these investment companies may be sold to an investor is prescribed by § 22(d) of the Investment Company Act of 1940, 15 U. S. C. § 80a-22 to be the "current public offering price described in the prospectus". The current public offering price described in the prospectus of Investors Stock Fund, Inc., Investors Mutual, Inc. and Investors Selective Fund, Inc. is their "net asset value, ordinarily determined daily, plus a maximum sales charge of 8% of the public offering price" (lesser commission percentages apply for quantity sales). This is generally described as the "asked" price in the financial pages.

9. The "net asset value" is computed daily as of the close of trading on the New York Stock Exchange. The total assets are valued and the total outstanding liabilities, including all reserves and accrued expenses, are subtracted. The resulting net worth is divided by the number of shares outstanding to determine the "net asset value" per share of capital stock. This is generally described as the "bid" price in the financial pages.

10. Shares of these investment companies are distributed exclusively by IDS pursuant to distribution agreements with the investment companies. IDS is required by § 22(d) of the Investment Company Act of 1940, 15 U. S. C. § 80a-22, to sell shares in these registered investment companies at the current public offering price described in the prospectus (in this instance net asset value plus a maximum sales charge of 8% of the public offering price). IDS receives, in full payment for its services as distributor of these shares, a distribution fee equal to the amount by which the public offering price exceeds net asset value (a sales charge of a maximum of 8% of the public offering price with lesser percentages applying for quantity sales). The remainder of the purchase price is the "net asset value" which is remitted to the investment company. From its fee, IDS pays commission to its sales representatives and other expenses incident to or in connection with the distribution and sale of the investment companies stock.

11. Certificates evidencing share holdings may be issued by the investment companies, but, as a practical matter, they are generally not issued, but rather held by the investment company for the account of the owner.

12. As stated in each prospectus, the certificate of incorporation of each of these investment companies gives each registered shareholder the right to require the investment company to redeem his shares at any time at the redemption price described in the prospectus. Although there are no restrictions on the transferability of shares of these investment companies, the shareholders ordinarily dispose of them by requesting the company to redeem them.



13. The redemption price is the "net asset value" calculated as of the close of business on the day of receipt of the surrendered stock certificates or request to redeem by the shareholder.

14. There is no charge for redemption.

15. There are three ways by which a person may purchase shares from these investment companies, as follows:

(a) By an initial investment in shares offered by Investors Diversified Services, Inc.

(b) By directing the reinvestment of dividends and capital gains distributions on shares already owned in additional shares.

(c) By exchanging shares of one of these funds for shares of another of these funds.

16. A person who wishes to make an initial investment in such shares pays the "asked price" as defined in Stipulation No. 8 above.

17. A person who is already a shareholder of the investment company, by written authorization, may appoint IDS as his agent to reinvest his cash dividends and/or capital gains in additional shares of the respective investment company at the "net asset value" or "bid price" without any additional charge or sales commission.

18. Any shareholder has the right to transfer or exchange his shares in any one or more of these investment companies managed by IDS into or for shares of any of its other investment companies at "net asset value" or "bid price" without sales or service charge.



19. From June 7, 1950, to December 2, 1952, Arthur Y. Bennett, husband of the deceased, acquired 2203.632 shares of Investors Selective Fund, Inc. in Account No. 015-0302717. He purchased 2013.33 of these shares at the "asked price" (net asset value plus sales charge). The remaining 190.299 shares were purchased for his account at "net asset value" or "bid price" by IDS pursuant to his authorization to reinvest his capital gains and dividends.

20. On December 2, 1952, Arthur Y. Bennett exchanged the 2203.632 shares of Investors Selective Fund, Inc. held for him in Account No. 015-0302717 at their "net asset value" for the following shares at their "net asset value":

(a) 748.968 shares of Investors Mutual, Inc. (Account No. 027-0302717).

(b) 632.540 shares of Investors Stock Fund, Inc. (Account No. 033-0302717).

21. From December 2, 1952, to October 1, 1962, Arthur Y. Bennett acquired 1819.454 additional shares of Investors Mutual, Inc. in Account No. 027-0302717 as follows:

(a) 984.074 new shares at the "asked price" ("net asset value" plus commissions).

(b) 43.206 shares by reinvestment of dividends and capital gains at the "net asset value" or "bid price".

(c) 792.174 shares as a two-for-one stock split declared on September 26, 1956.

This gave him a total of 2568.422 shares of Investors Mutual, Inc. in Account No. 027-0302717 as of the date of his death.

22. From December 2, 1952, to October 1, 1962, Arthur Y. Bennett acquired 1636.836 additional shares of Investors Stock Fund, Inc. in Account No. 033-0302717 as follows:

- (a) 453.392 new shares at the "asked price" ("net asset value" plus commissions).
- (b) 38.756 shares by reinvestment of dividends and capital gains at "net asset value" or "bid price".
- (c) 1134.688 shares as a two-for-one stock split declared on September 26, 1956.

This gave him a total of 2269.376 shares of Investors Stock Fund, Inc. in Account No. 033-0302717 as of the date of his death.

23. On May 5, 1961, Arthur Y. Bennett purchased 1869.159 shares of Investors Selective Fund, Inc. at their "asked price" ("net asset value" plus commissions). These shares were credited to him in Account No. 055-0302717. He owned these shares as of the date of his death on October 1, 1962.

24. In summary, as of the date of his death on October 1, 1962, Arthur T. Bennett owned:

- (a) 2568.422 shares of Investors Mutual, Inc. (Account No. 037-0302717).
- (b) 2269.376 shares of Investors Stock Fund, Inc. (Account No. 033-0302717).
- (c) 1869.159 shares of Investors Selective Fund, Inc. (Account No. 055-0302717).

25. His ownership of these shares was reported in the federal estate tax return filed by the executor of the Estate of Arthur Y. Bennett and the estate tax was computed and paid on the net asset value or bid price as of the date of death.

26. The federal estate tax return filed for the Estate of Arthur Y. Bennett was examined by the Internal Revenue Service and the value of the mutual fund shares was accepted at the "net asset value" or "bid price" in October, 1964, on the stipulation that these values be used thereafter as their basis for income tax purposes. This acceptance was pursuant to Rev. Proc. 64-18, C. B. 1964-1, 1968, which had been issued in April, 1964.

27. The shares described in 24 above became the property of his surviving widow, Ethel B. Bennett, by virtue of the terms of his last will and testament.

28. In addition to the shares described above, Arthur Y. Bennett, during his lifetime, purchased 626.252 shares of Investors Mutual, Inc. at the "asked price" ("net asset value" plus a sales charge) for Ethel B. Bennett, as trustee for Dorothy B. Cartwright, their daughter. Thereafter, Mrs. Bennett, as trustee, purchased 814.431 shares at their "net asset value" or "bid price" by authorizing IDS, as her agent to reinvest the capital gains and dividends. The trustee also received 626.848 shares in a two-for-one stock split declared on September 26, 1956. This amounted to a total of 2067.531 shares credited to the account of Ethel B. Bennett in Account No. 047-0302717, transferred in 1962 to Account No. 067-0302717.

29. At the time of her death on December 4, 1964, Ethel B. Bennett was the owner, in her individual name, of:

- (a) 2568.422 shares of Investors Mutual, Inc.
- (b) 2269.376 shares of Investors Stock Fund, Inc.
- (c) 1869.159 shares of Investors Selective Fund, Inc. and, as trustee of a trust for the benefit of her daughter, Dorothy B. Cartwright.
- (d) 2067.531 shares of Investors Mutual, Inc.

30. Under the terms of the last will and testament of Ethel B. Bennett, a copy of which is attached as Exhibit D, she bequeathed 35% of the residue outright to her daughter, Dorothy B. Cartwright, and directed that the remaining 65% be held in trust for the life use of her daughter, Dorothy B. Cartwright, naming her grandson, Douglas B. Cartwright, and her granddaughter, Carolyn Tenney, as trustees and remaindermen.

31. The mutual fund shares owned by Ethel B. Bennett were distributed as follows:

- (a) 2568.422 shares of Investors Mutual, Inc. to Douglas B. Cartwright and Carolyn Tenney as trustees for the benefit of Dorothy B. Cartwright.
- (b) 2269.376 shares of Investors Stock Fund, Inc. to Douglas B. Cartwright and Carolyn Tenney as trustees for Dorothy B. Cartwright.
- (c) 1290.000 shares of Investors Stock Fund, Inc. to Dorothy B. Cartwright (the balance of the Investors Stock Fund shares).

(d) 1869.159 shares of Investors Selective Fund, Inc. to Douglas B. Cartwright and Carolyn Tenney as trustees for Dorothy B. Cartwright.

32. Douglas B. Cartwright and Carolyn Tenney as trustees requested the investment companies to redeem:

(a) 2568.422 shares of Investors Mutual, Inc. and

(b) 979.376 shares of Investors Stock Fund, Inc. and on February 19, 1969, these companies redeemed said shares at their "net asset value" or "bid price".

33. Dorothy B. Cartwright became the owner, on the death of her mother, of the 2067.531 shares of Investors Mutual, Inc. which had been registered in the name of her mother as trustee. Some of them are presently registered in her name and the rest are held in custodian account for the benefit of five of her grandchildren.

34. Dorothy B. Cartwright gave 430 shares of Investors Stock Fund, Inc. to Carolyn Tenney and 430 to Douglas B. Cartwright, keeping 430 shares in her own name. Carolyn Tenney and Dorothy Cartwright still own 430 shares apiece. Douglas Cartwright requested Investors Stock Fund, Inc. to redeem his 430 shares, and on November 7, 1966, these shares were redeemed at their "net asset value" or "bid price".

35. Attached as Exhibits E, F and G are the 1964 annual reports of Investors Mutual, Inc., Investors Stock Fund, Inc. and Investors Selective Fund, Inc. It is further stipulated that these are true and correct copies of the 1964 annual reports of these investment companies which were issued to the shareholders in the regular course of business.



Unless the Court expressly orders otherwise, if the Court determines that plaintiff is entitled to any relief against defendant on its complaint, the parties will jointly compute the amount of the judgment in accordance with the Court's findings of fact and conclusions of law and submit the computation to the Court for its approval and entry of judgment; if the parties cannot agree on the proper computation, the Court will determine the amount of the judgment, and until such time, no final judgment shall be deemed to have been entered in this action.

**RALPH J. GREGG,**  
*Counsel for Plaintiff,*

**DONALD T. FISH,**  
*Counsel for Defendant.*



**Official Report of Proceedings Held  
April 3, 1970.**

[Caption omitted.]

**PROCEEDINGS**

[Tr. 4] The Court: Mr. Knisley, you have the appearances. I understand both the taxpayer and the Government are ready in the case of Douglas Cartwright as Executor, against the United States. Is that true?

Mr. Gregg: Yes, sir.

Mr. Fish: Yes, sir

*Colloquy Between Court and Counsel.*

The Court: There is, as I understand, I saw a proposed stipulation of fact. Has that been executed?

Mr. Gregg: It has been executed, your Honor.

The Court: By the Government by Mr. Fish and by Mr. Gregg for the plaintiff, is that right?

Mr. Gregg: Correct.

The Court: All right. This shall be filed, Mr. White, with you. I will give it to you at the end.

Mr. Gregg: And in connection with it, there are six exhibits which are identified in the stips as A, B, C through G.

The Court: All right.

[Tr. 5] Mr. Gregg: The Court might like to have the clerk number them, but they are the items that we agreed on.

The Court: Mark those, each as a separate exhibit, Plaintiff's Exhibits 1 through 6.

Mr. Fish: Your Honor, the stipulation was executed with the reservation that all objections as to materiality and relevancy would be deferred until the time of trial and at the proper time I would wish to make objection.

The Court: I am sure some of the material there is not relevant or material, and if so, you object to it.

Mr. Fish: May I make specific reference to specific numbered paragraphs?

The Court: Yes.

Mr. Fish: All right. I would make objections to Paragraphs 19 through 23, inclusive.

The Court: Just a minute. Is this on the stipulation of fact?

[Tr. 6] Mr. Fish: Yes, your Honor.

The Court: All right. I will note your objection and reserve on it. You object to—

Mr. Fish: Paragraphs 19 through 23, inclusive, and Paragraphs 30 through 34, inclusive.

The Court: 19 to—

Mr. Fish: 19 through 28.

The Court: And what was the other?

Mr. Fish: 30 through 34.

The Court: All right. I will reserve decision.

Mr. Fish: Thank you, your Honor.

The Court: Let us identify for the record, each one of these exhibits and tell us what it is.

[Tr. 7] (Whereupon, a document described as 1964 annual report, Investors Selective Fund, Inc., a bond and preferred stock fund, was then marked as Plaintiff's Exhibit Number 1 for identification.)

(Whereupon, a document described as 1964 annual report, Investors Stock Fund, Inc., a common stock mutual fund, was then marked as Plaintiff's Exhibit Number 2 for identification.)

(Whereupon, a document described as Investors Selective Fund, Inc., Prospectus, October 16, 1964, was then marked as Plaintiff's Exhibit Number 3 for identification.)

(Whereupon, a document described as Investors Stock Fund, Inc., Prospectus, October 16, 1964, was then marked as Plaintiff's Exhibit Number 4 for identification.)

[Tr. 8] (Whereupon, a document described as 1964 annual report, Investors Mutual, Inc., the World's Largest Mutual Fund, was then marked as Plaintiff's Exhibit Number 5 for identification.)

(Whereupon, a document described as Investors Mutual, Inc., Prospectus, October 16, 1964, was then marked as Plaintiff's Exhibit Number 6 for identification.)

[Tr. 9] The Court: All right and the Government, you agree that these may be marked in evidence, and as to these, Mr. Fish, will you have some objection or arguments on relevancy or materiality?

Mr. Fish: If I understand correctly, your Honor, may I first state that for the three mutual funds which are involved in this case, what one through six represents are the annual reports for each of the three and the Prospectus for each of the three.

Mr. Gregg: That is right.

Mr. Fish: Your Honor, I would just say this, if any of those annual reports, your Honor, or Prospectuses contain matter which would be conclusiary in nature or be argumentative or contain legal conclusions—

The Court: Legal conclusions as to what the problem is, especially in this case you would object to [Tr. 10] it.

Mr. Fish: I would object to anything but the facts which are specific and particular facts which are in there.

The Court: I will reserve decision on those.

[Exhibits 1-6 admitted—Tr. 12-14]

[Tr.14] Mr. Gregg: Your Honor, there is already on file request for admissions. You know, the original.

[Tr. 15] The Court: Yes.

Mr. Gregg: And that was answered by the defendant. I combined them in one document which is agreeable to counsel for the defendant, so perhaps we could mark this as an exhibit or a submission to be part of the record.

The Court: I see. This coupled with your request and the answers.

Mr. Gregg: Right. It is relatively simple to do, but it is hard to work with.

Mr. Fish: Your Honor, we have certain objections. I believe the requests reserve the right to make our objections at the time of trial. We have certain objections to the numbered paragraphs of that request for admissions.

The Court: Do you want to make that statement now?

Mr. Fish: Yes, your Honor.

The Court: Would you hand that up, please. This will be filed in the file.

[Tr. 16] It is not an exhibit.

Mr. Fish: I would note that the Government objects to the following numbered requests for admissions, 2, 3, 7, 8, 9, 10, 13, 14, and 15. I would like to state that we objected, first that they are irrelevant and immaterial to the issues in this case and secondly, we would like to note that our position is that they do nothing more than reflect the uncertain situation which prevailed in this area as to valuation of mutual fund shares prior to the issuance of Treasury Decision 6680, which added the Section 20.2081-8 (b), to the regulations for estate tax.

The Court: Mr. Fish, as I read this document entitled "Admissions as Requested by Plaintiff and Revised by the Defendant in his Answers to the Requests", that the material in the parentheses is your comments upon the answers [Tr. 17] and would summarize the nature of your objections to each one of these?

Mr. Fish: Your Honor, may I state, for the record, I have not reviewed that particular document. I would state, though, that I assume that the court's files do contain the original request by the plaintiff and the defendant's answer with qualifications which would be the basis for these objections which I have made because I hadn't had a copy of the combined requests.

Mr. Gregg: Mr. Fish hadn't had a copy of it, but actually what I did was use the exact terminology that he wanted.

The Court: That he used in his defendant's answer to plaintiff's request for admission?

Mr. Gregg: Yes.

Mr. Fish: I would assume, your Honor, that the objections I just made on the record can be coordinated with [Tr. 18] that document you have there, your Honor, without any difficulty at all.

The Court: All right.

Mr. Fish: Your Honor, I would also note that the—

The Court: Just a minute, please, Mr. Fish.

Mr. Fish: Yes, your Honor.

The Court: Mr. White, also I will file at the end of the day with you, document entitled "Admissions as Requested by Plaintiff and as Revised by Defendant", and the answers of the defendant. That will be filed in the clerk's office. Go ahead, Mr. Fish.

Mr. Fish: All right, your Honor. I note as to the request for admission 12 the Government specifically denied Sentence 2 of that request. I would note that as to 13, 14, and 15, all the request asked was that we admit the genuineness of certain documents [Tr. 19] and we would specifically now note that these documents which we admitted to as being only genuine reflect nothing more than



administrative determinations and should not be before this Court, the documents and the matter contained therein, and as to any and all of those requests which are ultimately put in evidence or the Court feels should be in evidence, we assume that the Government's qualifications will be taken into consideration.

The Court: Right. In other words, as far as the Court considering the administrative determinations which were made in the Wink Case, the Metz Case and the Wilder Case, that those determinations shouldn't be considered by the Court.

Mr. Fish: I believe that there is substantial law to support the proposition, your Honor, that these are not judicial determinations; they are not Court determinations and they have no place in a proceeding such as this.

The Court: There are many reasons why we [Tr. 20] shouldn't go into them.

Mr. Fish: Right. It would actually probably not be the best thing for administrative—

Mr. Gregg: I would like to say in that connection, your Honor, that they do constitute admissions against interest. At least they can be so considered.

The Court: All right. I will reserve your objection on that.

Mr. Fish: Might I note just one more thing, your Honor, that those documents represent cases where the decedent died prior to October 11, 1963, and that would tie in with the Treasury Decision which applied to decedents who died after that date, and you will see the tie-in after you see the proof.

The Court: All right.

Mr. Gregg: While we have a good running record here of documents I believe counsel has no objection to the marking for identification and receipt in evidence of these three documents.

Mr. Fish: Your Honor, Mr. Gregg has stated that these certificates of incorporation [Tr. 21] were sent to him by the secretary of the three investment companies and we agree that these go into evidence, but I would request we be furnished copies of these documents.

The Court: All right. Mark those as separate exhibits, Mr. Gregg.

(Whereupon, a document described as a Certification by the Secretary of Investors Stock Fund, Inc., bearing date of February 26, 1970, was then received in evidence as Plaintiff's Exhibit Number 7.)

(Whereupon, a document described as a Certification by the Secretary of Investors Mutual, Inc., bearing date of February 26, 1970, was then received in evidence as Plaintiff's Exhibit Number 8.)

(Whereupon, a document described as a Certification by the Secretary of Investors Selective Fund, Inc., bearing date of February 26, 1970, was then received in evidence as Plaintiff's Exhibit Number 9.)

[Tr. 22] Mr. Fish: Thank you, your Honor.

The Court: Plaintiff's Exhibit Number 7 is what, Mr. Gregg?

Mr. Gregg: Certificate of incorporation of Investors Stock Fund. Number 8, of Investors Mutual.

The Court: Number 8 is certificate of incorporation?

Mr. Gregg: Certificate of incorporation, yes.

The Court: Of Investors—

Mr. Gregg: Mutual, Inc.

*F. Cohn, for Pltff., Direct.*

The Court: Mutual, Inc.?

Mr. Gregg: Yes. Number 9 is Investors Selective Fund, Inc.

The Court: Selective.

Mr. Gregg: Selective.

The Court: Not "service" but "fund", is that it, Mr. Gregg?

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[Tr. 30] FRED COHN (8 Devon Lane, Williamsville, New York) a Witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gregg:

The Court: Mr. Cohn, you will have to speak up in this courtroom. It is hard to hear.

By Mr. Gregg:

Q. You have already given your name and address to the clerk, have you, Mr. Cohn? A. Yes.

Q. First we would like to know your background and experience, where you work, what your duties are. Tell us where you work now? A. I work at Hugh Johnson and Company, members of the New York Stock Exchange.

Q. Located where? A. 1800 Rand Building, Buffalo.

Q. Could you give us a brief summary of your employment with them? A. I have been with Hugh Johnson Company since incorporation [Tr. 31] twenty years ago. I was Treasurer of the company until a couple of years ago and now I am Executive Vice President. We deal in all kinds of stocks and bonds, mutual funds and so forth.

Q. Did your experience in stocks and bonds pre-date the incorporation of Hugh Johnson and Company? A. Yes, about three years. I have actually been in the investment business for twenty three years.

Q. And with whom were you in investment business prior to the incorporation of Hugh Johnson? A. The George Bondwright Company, Incorporated, of Rochester, which is also a New York Stock Exchange member.

Q. How large is your firm over there now, Mr. Cohn?

A. We have over two hundred employees, including about seventy, seventy-five salesmen.

Q. Did you specify what your office is now over there?

A. I am Executive Vice President of the firm.

Q. And Hugh Johnson is the President of the company?

A. He is the Chairman.

Q. Who is the president? A. The President is N. Michael Kaiser.

Q. Now,—

Mr. Fish: Your Honor, may I inquire at this time what will be the nature of Mr. Cohn's testimony?

[Tr. 32] The Court: Yes. That is why I asked you, Mr. Gregg. Can you explain to me what the purpose is of this witness' testimony this afternoon?

Mr. Gregg: One of the contentions of the Government and one of the things that has been a crucial point in the Court's decisions has been whether or not there is a free and open market, free willing buyer and seller situation in connection with the redemption of mutual funds. That is one point. Another point is the contention by the Government that the redemption of these shares is required by

law. This doesn't happen to be the case. There happens to be a very solid, strong business reason for it and this witness can give the Court the benefit of that testimony. Those are the two principal things.

The Court: All right.

Mr. Fish: Your Honor, may I state for the record—

The Court: Why don't we go ahead. We will hear the testimony. You can make your [Tr. 33] objections, Mr. Fish. Do you want to say something now?

Mr. Fish: Number one, your Honor, I do not believe that Mr. Cohn or Mr. Cohn's firm, Hugh Johnson and Company, engages in the sale of any of the mutual funds which are involved in this litigation, and number two, whether the shares, it seems rather clear to me from previous cases, whether these shares are redeemable as a matter of law or not, or as a matter of some other principle, is basically a legal conclusion and I think Mr. Johnson, as far as I can get out of what has been said so far, Mr. Johnson will be testifying only to legal matters and it is not proper.

The Court: Mr. Cohn.

Mr. Fish: Excuse me, I am sorry. Mr. Cohn. I apologize, and it is not proper.

Mr. Gregg: I don't propose to ask him any questions involving legal answers, your Honor.

The Court: I think that since he is here, Mr. Fish, there is no jury here.

[Tr. 34] Mr. Fish: All right.



The Court: We will listen to the testimony and then you may make your objections and motions to strike.

Mr. Fish: All right.

By Mr. Gregg:

Q. Now, what portion of your business over there at Hugh Johnson and Company has to do with mutual fund, mutual fund shares? A. We do about thirty per cent of our gross income is from mutual funds. It varies, of course, from year to year, but it is in that area.

Q. And about how many customers do you have that own mutual funds, approximately? A. Well, I couldn't give you an exact figure, but it numbers into the many thousands over the years that I have been with the firm.

Q. Now, Hugh Johnson is known for the Johnson Charts, is he not? A. That's correct.

Q. Do you happen to have a copy? I asked you to bring a copy with you. A. Yes, I have a copy.

Q. Would you explain to the Court the general format, purpose and contents of the Johnson Charts, which your Honor, do [Tr. 35] deal with mutual funds, including the Investors Diversified Services.

The Court: They do deal with the stocks which are the subject matter of this suit?

The Witness: Yes, they do.

The Court: All right.

The Witness: Johnson's Charts is an annual publication which is sold to investment dealers and other financial, interested financial people throughout the country. This year we are publishing our twenty-second annual edition. The book of this year will

include full page performance charts on about one hundred ninety-three funds and other information on a total of four hundred ninety-one funds. It gives records, performance records of these funds for one year, two years, three years, four years, five years, ten years, fifteen, twenty and twenty-five years.

By Mr. Gregg:

Q. How long have you been associated with the preparation of the Johnson Charts? [Tr. 36] A. Right from the beginning. This will be the twenty-second issue that I prepared.

Q. Consecutively? A. Yes, sir.

Q. And what role do you play in connection with them?

A. I have complete responsibility for the production of the charts.

Q. And you produce them by consulting various sources for various facts? A. That is correct.

Q. And what sources are they? A. Basically we get our information directly from the mutual funds involved, and then we also get economic and corporate information from the Department of Commerce, the Department of Labor, Bureau of Labor Statistics, the various associations such as savings bank associations, savings and loan associations, Standard and Poors reports, and so forth.

Q. Now, do you solicit and get information from Investors Diversified Services, and more particularly Investors Mutual Fund, Investors Stock Fund and Investors Selective Fund? A. Yes. Every one of those we have shown in our book ever since they were old enough to be shown.

[Tr. 37] Q. Now, if you are publishing charts and you say they are distributed throughout the country, you have

to contend in some way with the Securities and Exchange Commission? A. That is correct.

Q. In what way, if you would specify briefly.

Mr. Fish: Your Honor, that would be strictly legal. The Securities and Exchange Commission is outlined and provided by statute.

The Court: Well, I will reserve decision on that objection. Go ahead.

The Witness: Perhaps I could read a portion of the foreword. One paragraph in the foreword, which we consider particularly important and have it in red says all of the subject text, charts, illustrations and tables have been examined under all federal regulations and the statement of policy is amended November 5, 1967, issued jointly by the Securities and Exchange Commission and the National Association of Securities Dealers, Inc., and are on the opinion of counsel completely qualified under these regulations.

[Tr. 38] By Mr. Gregg:

Q. All right. Now, your charts deal in terms of value, do they not? A. That is correct.

Mr. Gregg: Your Honor, what I am getting at here is what is considered value in the industry, and this gentleman knows. Would you give—

Mr. Fish: Your Honor, let me state for the record the concept of values that Mr. Gregg is referring to and the point we are getting to is once again a matter of interpretation of the statute. It is a legal matter and has no relevancy here. He is not qualified to testify as to the value that was outlined in that statute.

The Court: Mr. Fish, on the other hand, the regulation, it must have some kind of a reason behind it and the reason must be based upon a number of factors, the statute, the industry if it is involved, so again I will reserve decision.

Mr. Fish: Thank you, your Honor.

The Court: Go ahead, Mr. Gregg.

[Tr. 39] Mr. Gregg: I think I'm going to ask to have the reporter read the question.

(Whereupon, the previous questions and answer were read as follows:

"Q: All right. Now, your charts deal in terms of value, do they not? A: That is correct.")

The Court: First of all, when you talk about value I think we should have your definition of value when you say "value". What do you mean by "value"?

The Witness: Why, value in mutual industry, we mean the actual net asset value of the shares of the mutual fund.

The Court: What do you mean by "net asset value"?

The Witness: Net asset value is the total of the market value of all securities owned by the fund and then the net asset value per share, if you want to go that far, is that same net asset value divided by the number of shares outstanding. In other words, the asset value is [Tr. 40] determined by the market value, most of which stocks would be on the New York Stock Exchange would be determined by the market value of all the stocks owned by the company.

The Court: I just wanted to be sure we are all using the same language. Go ahead, Mr. Gregg.

By Mr. Gregg:

Q. So when you are talking about net asset value per share you are talking about the undivided interest of the shareholder in the net asset of the company per share, is that substantially correct? A. Per share, that is correct.

Q. How do you show value in your charts? A. Well, our charts trace a \$10,000 investment in the various funds for a ten-year period.

Q. Yes. A. We start out with a \$10,000 investment and immediately show the value as \$10,000 less the cost of acquisition, so right on the face of the chart, perhaps I should use Investors Stock Fund as long as we have it here. Investors Stock Fund in this particular period which ended just a year ago, December, shows \$10,000 investment, initial asset value of \$9,200, and then we show our line of [Tr. 41] performance starting that same percentage below the \$10,000 mark.

Q. It starts at ninety two hundred? A. It starts at \$9,200.

Q. Are all the figures that you request from these investment companies expressed in net asset value? A. That is correct. All the figures that we show, all the year-end figures, all the final figures are shown as net asset value figures.

Q. Now, is this something that the NASD and the Securities and Exchange Commission requires? A. Under the statement of policy which I mentioned earlier it is required that all so-called charts of record or charts which are used as what they call supplemental sales literature along with the prospectus must show net asset value and must show that immediately from the beginning.



Q. Have you examined the Investors Stock Fund prospectus and the Investors Mutual Fund prospectus that I gave you? A. Yes, I have.

Q. So that is why the, all the charts in there start at \$9,200, illustrative of a \$10,000 investment? A. That is correct.

Q. Based on your experience over these years, your sales load, that other 8 per cent, ever taken into account in determining value, in connection with your charts or in connection in the industry? [Tr. 42] A. No. The custom in the industry is to show value as net asset value after sales charges.

Q. Now, if you know, you can say. If not, you can say you don't know. What does the sales load go for? What is the,—what does that pay for? A. The sales load pays, basically it pays the salesman. Then in the case of a firm like ourselves—

The Court: Wait a minute, Mr. Cohen. The sales load pays for the sales load, is that it?

The Witness: No. You misunderstood me, your Honor. It pays the salesman.

The Court: And is there anything else out of that?

The Witness: In a case like ourselves,—this may be different from the Investors Diversified Services group. In the case of a retail firm like ourselves, the firm itself receives remuneration and out of that remuneration the salesman gets something and then the national distributor also gets a piece of that, so it pays for sales expenses of various types.

The Court: I just wanted to be sure we are all using the same language. Go ahead, Mr. Cohen.

By Mr. Gregg:

Q. Now, in the case of Investors Diversified, in the case of [Tr. 43] Investors Stock Fund, we have seen from the exhibit here that the public offering price consists of net asset value plus a sales charge? A. Correct.

Q. Eight per cent in the usual situation subject to quantity discount? A. Right.

Q. Do you happen to know who gets the net asset value when the share is marketed? A. The net asset value goes to the fund itself.

Q. And the eight per cent goes to— A. The eight per cent in the case of IDS, I don't know specifically, but that is distributed by them in some manner.

Q. Now, based on your knowledge of the, that you have explained here, what is the purpose of having these redeemable shares?

Mr. Fish: Your Honor, that is highly objectionable. That is definitely fixed by statute, your Honor.

The Court: I agree, Mr. Fish. It is hard for me to see the relevancy of that, but again I will hear it.

Mr. Fish: I think we are getting into an area, your Honor, where we are mixing legal concepts with facts.

[Tr. 44] The Court: The purpose may not have anything to do with it, Mr. Gregg, but I will listen.

By Mr. Gregg:

Q. Why are they redeemable shares?

The Court: I will reserve

By Mr. Gregg:

Q. Where do they fit in the scheme of things? A. Well, from the point of view of a retail firm like ourselves it would be very difficult for a salesman to sell a mutual fund if the buyer did not know that he had marketability, and one of the major points, sales points of mutual funds is marketability and marketability of course means redemption and the redemption is guaranteed in one form or another by the fund.

Q. Now, only some companies have redeemable securities or redeemable shares, isn't that correct? A. Well, the open end companies or mutual funds have redeemable shares and then there are closed companies which do not have redeemable shares.

Q. And all of these are open end companies? A. All of the funds, mutual funds and all three funds of the IDS group that you are talking about here are open end, that is correct.

Q. You said that this gives them marketability but I didn't [Tr. 45] know whether you meant marketability or liquidity? A. Liquidity and marketability are terminology which are interchangeable.

Q. Can you explain to me why they need to have liquidity or marketability? A. I think I mentioned that briefly before, but a buyer of mutual funds or any other security would be, it would be very difficult to convince him to buy something if he didn't think that he could liquidate it if he needed the money.

Q. Yes. A. And I know in the case of funds that is a major sales point that we always explain to people that if they need the money they can always liquidate it at the then market value.

The Court: You can buy stock and do that.

The Witness: That is right.

The Court: Well, Mr. Cohn, would you explain to me please, I think we maybe ought to on the record now, these funds that were involved here are all open end?

The Witness: That is correct.

The Court: When you say "open end", again so that we make sure we are all using the same language, what is your definition [Tr. 46] of "open end"?

The Witness: An open end fund is one that will redeem its shares at the asset value and in most cases also continuously offer shares at net asset value plus sales charge.

The Court: All right. Open end, are they, are all of the open end funds, do they all have the same rules as far as how they shall be redeemed?

The Witness: I am not sure that I can say one hundred per cent, but in most cases, in almost every case the rules are very similar.

The Court: I see. Now again so we make sure we are all talking about the same thing, "closed end", what do you mean when you say "closed end"?

The Witness: Closed end fund sells a certain number of shares to the public and they do not redeem the shares. The shares then must be bought and sold on the open market, either over-the-counter market or as listed on an exchange like the New York Stock Exchange. For example, [Tr. 47] locally we have Niagara Share Corporation which is a closed end fund.

The Court: You buy that on the exchange?

The Witness: You must buy that on the exchange because they only have a limited number of shares outstanding and they are not selling more shares and the owner cannot sell them back to the corporation. He must sell them to another buyer.

The Court: None of the stocks or the funds we are involved with in this case, none of them are on the exchange?

The Witness: That is correct. They all redeem their own shares.

The Court: All right. Go ahead, Mr. Gregg.

By Mr. Gregg:

Q. You might explain, being a broker with a combination of mutual fund sales and regular stock sales, if you want to sell your shares of General Motors or so forth, how soon do you get paid for it or how soon are you supposed to get paid for it? A. Well, under the current regulations of the stock exchange you get paid in five business days or one full week.

Q. So that does represent liquidity? A. Correct. The same thing would be true of a mutual fund. [Tr. 48] If a customer of ours sold a mutual fund to us,—through us, not to us, but through us, we would also pay him in five business days.

Q. Yes. Now, closed end companies, as I understand, are also investment companies? A. That is correct.

Q. Now, do you know from your experience in this when the decision is made as to whether it is going to be a closed end company or an open end investment company? A. Well, that is usually made at the time the shares are offered



to the public. They say the offering company will say "we are offering so many shares and then the fund will be closed", and it is in the prospectus explaining that.

Q. Yes. Now, if they had, these shares had to trade on the open market instead of being redeemable shares; in other words, if they were kin to closed end companies rather than open end companies, are you able, based on your experience in the brokerage business, to tell us how they would sell with reference to net asset value generally?

Mr. Fish: Your Honor, he is posing a question that is posing a completely impossible situation and impossible to answer, and that is highly objectionable, if he says—

The Court: Well, again I will reserve decision. Go ahead. You may answer the question, Mr. Cohn.

[Tr. 49] Mr. Gregg: Would you, Mr. Reporter, repeat the final part of the question?

The Court: Mr. Knisley, would you repeat the question?

Mr. Gregg: Just the last few words.

(Whereupon, the pending question was read as follows:

"Q. Are you able, based on your experience in the brokerage business to tell us how they would sell with reference to net asset value, generally?")

The Witness: Yes. I believe so. In all of the years that I have been in the business, almost invariably, not one hundred per cent of the time but almost invariably, closed end funds sell at a discount from that asset value. In other words, lower than that asset value and often at a substantial discount.

I have seen closed end funds selling at as much as a twenty five, twenty to twenty five or even a thirty per cent discount from net asset value in certain market periods.

[Tr. 50] By Mr. Gregg:

Q. Does this put them at a disadvantage with open end companies? A. In my opinion it does. It is harder to sell a person a closed end company when he may get less than net asset value for those shares when sold.

The Court: On the other hand, there are some closed end companies on the market over net asset value.

The Witness: A few of them are, but not many. In most of the cases over the years, in the vast majority of cases over many, many years, they have sold at a discount.

By Mr. Gregg:

Q. Based on your twenty two years of experience with these mutual funds do you know of any instances of failure to redeem? A. None. No, sir, not any.

Q. Now, also in connection with your business have you had occasion from time to time to value mutual funds for the purposes, for estate tax purposes? A. Yes, we have.

Q. Would you please explain that? A. We have always felt that the value of mutual funds—

Q. First of all, what occasions have you had? [Tr. 51] A. Well, we have had, I would say over the years we have had hundreds of occasions to value funds, usually for attorneys who call up or executors who want valuations for estates.

Q. Yes. How did you value them for them? A. We have always felt that those should be valued and we have valued them at bid prices. However, in the last few years some attorneys have said the regulations have changed and asked us to value them at the offering price.

Q. Now, in those previous— A. We don't agree with that concept, but that is what they have asked us to do. Previous to that we always valued them at the bid price or the net asset value, which is synonymous.

Q. But it wasn't until two or three years ago that you were put on notice by some attorneys that they would want the ask price? A. A few years ago, yes.

Q. Have you had occasion to discuss value with owners of these funds on other occasions? A. Well, we quite often make inventories for customers and in every case where we inventory funds for customers we always show them at the net asset value.

Q. That would be for the purpose of valuing their portfolio? A. Of evaluation of the portfolio. We show individual stocks at market price as of a certain date and we show the [Tr. 52] mutual funds at net asset value as of that same date.

Q. Do you know of a public market for mutual fund shares? For example, well, let me put it this way. Do you know of any market, public or otherwise, where the estate of Ethel Bennett could have received more than the net asset value? A. There may be—

Mr. Fish: Your Honor, there is nothing in the record to show he is familiar with the estate of Ethel Bennett at this time and therefore there is not a proper foundation for this question.

The Court: I will overrule.

By Mr. Gregg:

Q. The question was do you know the market, public or otherwise—

The Court: What year is this now?

Mr. Gregg: '64.

The Court: '64. In the year '64.

The Witness: I know of none personally. It is always possible that there may have been one, but I know of none.

By Mr. Gregg:

Q. I have one more question for you. I asked you if you would be prepared to give us a quotation and identify [Tr. 58] values in connection with companies that went from no load to a load. Would you explain, first of all, what a load company is and a no load company? A. A so-called load company is the type of company to which we have been referring where the company is sold to the investor at net asset value plus a sales charge.

The Court: We are still only talking about open end companies?

The Witness: Now we are talking about open end companies, that's right. The sales charge is referred to commonly as the load. There are some companies in the country which sell at net asset value or are so-called no load companies. The quotation on a no load company, the offering price would be the same as the asset value or bid price.

By Mr. Gregg:

Q. Do you know of instances of this where, first of all, you can identify some no load companies, can you not? A. Oh, yes.

Q. Could you give us the names of three or four? A. If I can refer to my book here.

Q. Sure. A. I can give you the names of quite a few more than that.

[Tr. 54] Q. Sure. A. Devgh Mutual Funds, Loomis Sales Mutual Fund, Pine Street Fund, One William Street Fund, Steinrow and Farnham Fund. There are several dozen more, if you want me to continue.

The Court: That should be enough.

By Mr. Gregg:

Q. Now, were any of those at one time load funds? A. Yes. One William Street Fund in particular was a fund that we were the original underwriting of it, about 1957 or 8. That had a full sales charge and then a few years later they eliminated the sales charge and it has been since a no load fund.

Q. And Hartwell and Campbell? A. Is another illustration of those, that's right.

The Court: Mr. Cohn, in a no load fund do you mean to say that no commissions are paid to salesmen, or what happens?

The Witness: That is correct. In fact there are really no salesmen, because a salesman will not go out and sell a fund if he cannot be paid for it. These are sold by advertising and so forth, other promotional methods.

The Court: Of course, the advertising cost—

The Witness: That is correct.

[Tr. 55] The Court: How does the company—

The Witness: The fund apparently feels that the management fee is sufficient to allow them to expend the money to advertise it.



The Court: That was the other question I had. In this eight per cent is the management fee included in the eight per cent?

The Witness: No, in no way. The management fee is taken out usually quarterly on a percentage basis of assets and that comes out of income.

The Court: That is true of all of the load, open end funds?

The Witness: No, load and no load funds, all investment companies.

The Court: Of course we can look at the prospectus here. Isn't it, isn't the investor told that out of that load that he is paying not only commission but he is also paying for management and expertise?

The Witness: The prospectus which is required by law to be given to the investor prior to his purchase explains that in detail, and I believe you have a copy of the [Tr. 56] various prospectuses here.

The Court: Yes.

The Witness: That explains that in detail. It explains what the sales charge or load is. It explains what the management fee is also and those are two different costs. The sales charges are paid for sales expenses and the management fee is paid to the management for continuing management of the portfolio.

The Court: The eight per cent is only for sales?

The Witness: That is correct.

The Court: And management comes out of income?

The Witness: Income.

The Court: From the various stocks in the funds?

The Witness: That is correct.

The Court: And then, of course, after that is taken out, then the value, net asset value to the owner then would be load less management fee?

The Witness: That is not quite correct. The net asset value is the total market value of all of the securities held by the fund. The management fee comes out [Tr. 57] of the income generated.

The Court: All right, fine. Very well. I see now.

By Mr. Gregg:

Q. I believe these Wall Street Journal quotations came from your files? A. That is correct.

Mr. Gregg: We tried to get them from the library, but it takes a week to get a print out from the Wall Street Journal.

Mr. Fish: Your Honor, the Government will stipulate—

The Court: You have already stipulated.

Mr. Fish: No, but on his representation, your Honor, if he is just trying to establish values reflected in the Wall Street Journal as of a given date, those can be put in the record.

The Court: They are in the record, aren't they?

Mr. Gregg: These have to go back to his office.

The Court: I mean in the stipulation of fact you have already agreed as to the—

Mr. Fish: No, this is not in there, your Honor.

The Court: This is something else.

[Tr. 58] Mr. Fish: Plus the fact Mr. Gregg in his brief referred to the figures he is now referring to, and

if I understand him correctly there was a little bit of discrepancy when those figures were checked out at the library.

The Court: I see.

Mr. Fish: What I am saying here is if it is just value of those funds on one day and then the value the next day, if Mr. Gregg wishes by letter form or whatever form he wishes to supply this for the Court, we will accept those figures.

The Court: Well, Mr. Cohn is here. Maybe we can continue.

Mr. Fish: If he knows.

By Mr. Gregg:

Q. Mr. Cohn, will you give the quotations and the dates for the particular fund? A. This is the mutual fund list, from the Wall Street Journal dated Friday, July 17, 1964 and in this list it shows One William Street. One William Street is quoted bid fourteen fifty eight; asked fifteen ninety three. Bid, of course, is not asset value. Asked is net asset value [Tr 59] plus sales charges. On July 20th—

Q. It had gone no load in the meantime? A. It had changed its policy and become a no load fund. On July 20th the quotation of One William Street is fourteen fifty five bid; fourteen fifty five asked.

Q. Now, the same with reference to Hartwell and Campbell? A. Hartwell and Campbell, became a no load fund in 1970. January 27th, Hartwell and Campbell was quoted thirteen ninety one bid; fifteen twenty asked. On January 28th Hartwell and Campbell is quoted thirteen eighty one bid; thirteen eighty one asked.

Q. That, and then in the meantime it had gone no load?

A. That is correct.

Q. There is a three-day interval in that last one? A. It might be a weekend. No, on Hartwell and Campbell there is only one day. On William Street there is three days. It may have been a weekend.

Q. Wouldn't that show on the— A. Friday and Monday, yes it was. Friday to Monday.

Q. All right. A. And Hartwell and Campbell was the next day.

Q. You had an opportunity to review the, I thought perhaps you could help explain the relationship between Investors Diversified Services and Investors Stock Fund Mutual, etc. A. As I understand it, Investors Diversified Service—

[Tr. 60] Mr. Fish: Your Honor, I believe we have men from those companies who would be better qualified. He is not employed by the company.

The Court: Mr. Cohn, you say "I understand". You have some men here from the company, Mr. Gregg?

Mr. Gregg: Yes. He is quite familiar, your Honor, with the prospectuses. This is easy for him.

Mr. Fish: The prospectuses, your Honor, are in evidence. If he's going to testify to the workings of these particular companies—

The Court: Mr. Cohn, as I understand, you understand the function of these companies?

The Witness: Yes, sir.

The Court: All right. I will hear it.

*P. Cohn, for Plff., Cross.*

*A. Fish:* The Witness: Investors Diversified Services is the sales organization of the sponsoring organization or the underwriter, whereas Investors Stock Fund, Investors Mutual and Investors Selective Fund are the investment companies themselves and Investors Stock Fund, for example, will [Tr. 61] sell its shares at net asset value to IDS, who will then sell these shares to the public at offering price.

*Mr. Gregg:* I think that is all.

*The Court:* Mr. Fish.

*Mr. Fish:* Your Honor, I believe the Government has made its objections before this gentleman testified, as to his testimony.

*The Court:* Yes.

**CROSS EXAMINATION by Mr. Fish:**

*Q.* Mr. Cohn, Hugh Johnson and Company does not sell shares in Investors Mutual, Inc. is that true? *A.* That is correct.

*Q.* Nor does it sell shares in Investors Stock Fund, Incorporated? *A.* Right.

*Q.* Nor does it sell shares in Investors Selective Fund, Incorporated? *A.* That's right.

*Q.* Now, stocks in those three funds are sold by whom? *A.* They are sold by the retail organization of IDS.

*Q.* When you say that you mean they are sold by Investors Diversified Services, Incorporated? [Tr. 62] *A.* Investors Diversified Services.

*Q.* Incorporated, correct? *A.* I believe so.

*Q.* All right, if you know. If you don't, just indicate you don't. *A.* I am quite sure that that is the case.



Q. Okay. Now, when you were making the term "value" synonymous, I believe, with the term "net asset value", correct? A. Correct.

Q. When you make reference to the term "net asset value", is that as it is used in the investment company act which defines net asset value, I believe? A. I don't think I am qualified to explain the investment company act.

Q. Do you feel you are qualified to explain the Securities and Exchange Commission act? A. I didn't say I was qualified to explain that.

Q. You are not an attorney, is that right? A. I am not an attorney, that's right. I don't want to give any kind of legal answers.

The Court: All right, Mr. Fish.

By Mr. Fish:

Q. All right. That is sufficient. I believe you said it that at times in the past you had opportunity to value open end investment company or mutual fund shares for [Tr. 63] purposes of estates or for other purposes? A. That's right.

Q. As part of your business, is that correct? A. That's right.

Q. Now, in effect when you value, when you said you valued them, you in effect took the bid or redemption price and that was the value placed on them, is that correct? A. That's correct.

Q. And if I understand you subsequently, you have also at times taken what I would call the public offering price or the ask price and value them at that, is that correct? A. We have done that upon the request of attorneys, but that is not—

Q. Let me ask you this: Did you do this, is the question I asked? A. We have done this.

Q. You have done it? A. We have done this.

Q. For purposes of business? I mean this is part of the business? A. For estate valuation, not for purposes of inventory valuation, no.

Q. No, but did you receive a fee for placing this value, let's say, on these shares? A. Not usually. We usually do that for no cost.

[Tr. 64] Q. For no cost? A. That is a service.

Q. Would this ever figure into part of the cost to a client or to an estate? Could it be considered you receive value for it? A. We usually only charge for an estate for transferring the securities from one name to another and that is a nominal charge of five or ten dollars.

Q. There is a charge? A. Which has nothing to do really with the valuation of the portfolio. It is just a transfer charge. It doesn't cover our cost, actually.

Q. If I were to call you today and say "Mr. Cohn, I have a client who has passed away and I would like you to value a certain number of shares in an open end investment company or mutual fund shares, will you value this for me", would you possibly charge me a fee for this valuation? A. We very seldom charge a fee.

Q. That wasn't the question. "Would you", is what I asked. Would you receive compensation for services? A. Not usually, not usually. Very seldom.

Q. When you say "very seldom", you could and you do? A. Well, could I explain it more fully?

Q. Surely.

The Court: Yes.

Q. I am sure you are sure that that is the case.

[Tr. 65] The Witness: Usually when we get a request for that it is from an attorney that has done business with us and we do it for him as a favor. It is very seldom that someone we don't know will call us up and ask us for this and on occasion where it is someone we never knew before or didn't know if we would ever do business with we may possibly charge a fee.

By Mr. Fish:

Q. Let me see if I get this straight. What I am trying to establish is that Hugh Johnson and Company as Hugh Johnson and Company through its authorized agents has valued mutual fund shares at the public asking price or at the asked price, is that correct?

Mr. Gregg: Your Honor, I object to the form of the question. The witness testified that they did this only at the request of the estate.

The Court: I will overrule it. I will hear it.

The Witness: Will you repeat the question?

By Mr. Fish:

Q. Yes. Is it a fair statement to say that Hugh Johnson and Company through its authorized agency or its officers has [Tr. 66] valued mutual fund shares on request at the asked price or what we call the asked price or the public offering price? A. Yes, we have.

Q. All right. Now, when you use the term "net asset value", is that to be taken as being synonymous with what we would call the bid or the redemption price for these shares? A. Yes, it is.

[Tr. 67] Q. Okay. Now let me ask you this, if you know: is it a fact that no load funds may charge up to a two per

cent premium over net asset value at the time of issuance of the security or at the time of redemption? A. If they charge at the time of issuance it would not be a no load fund. It would be maybe a low load, but not a no load fund.

Q. No. I say is it? To your knowledge do you know? A. I believe in the past some funds used to charge a small redemption fee of one per cent. I don't know if any still do.

Q. Well, if you know may no load funds charge up to two per cent as a premium, if you know? A. Whether they may legally or not I don't know.

Q. Okay. A. But in the past I know that they have charged as much as one per cent.

Q. As much as one per cent, okay. A. There have been rare instances, but it has been done.

Q. Now, Mr. Cohn, would it be a fair statement to say that the resale market value as far as open end investment company shares and mutual fund shares is concerned is a negligible, except for redemption by the issuing company? A. By "resale" do you mean "liquidation"?

Q. Yes, redemption? Do you know of any other way that the— [Tr. 68] A. I would say, I think it is a fair statement that you could say it is negligible, except for the issuing company. I am sure there have been cases where there have been purchases other than by the issuing company, but it is very small.

Q. This would be, is it correct, would be at what we call the redemption price? A. If other than the fund redeemed them they could redeem them at any price they wish.

Q. Do you know of any market for these mutual fund shares other than through redemption by the issuing company? A. I know of none. There may be one, but I know of none offhand. There are dealers, to carry that a little further, there are dealers, I believe, who may buy these. We would have to, I would have to refer to the over-the-counter sheets to verify that.

Q. Would it be still, is it still your testimony if it happened this way this would be a negligible occurrence? A. It would be a negligible amount.

Q. All right. Now, Mr. Cohn, does Hugh Johnson and Company ever act as, say, broker, underwriter, when you have a new issuance of common stock in a certain company? A. Yes.

Q. Now, would it be, when you have a new issuance of stock to the public and Hugh Johnson is the broker underwriter, [Tr. 69] what does the issuing corporation receive on the sale of the stock? A. The net,—the issuing corporation receives a price, an amount less than the offering price by the amount of the underwriting concession.

Q. All right. Now, is it true though that the underwriting cost would be reflected in the public offering price of the securities on the original issue? A. The original issue price includes the underwriting cost.

Q. They would be included in the public offering price, is that correct? A. That is correct.

Q. Would it be a fair statement, to say, Mr. Cohn, that when shares in an open end mutual or an open end investment company are bought— A. Purchased, do you mean?



*F. Cohn, for Pitt., Re-direct.*

Q. When they are purchased or when they are redeemed, that whether we are talking about the bid price or the ask price, that these prices are not subject to negotiation; is that a correct statement? A. That is correct.

Q. Okay. In other words, if I understand you correctly, if they are bought at the public offering price, is that correct? A. That is correct.

[Tr. 70] Q. Which is established how often, if you know? A. That is established once a day.

Q. Okay. A. In most cases.

Q. And the redemption price is the same, daily? A. It is established at the same time. The redemption price and the offering price is established by adding the sales charge on to the asset value.

Q. If you want to purchase these shares on a particular day there would be no element of negotiation entering into your attempt or your wish to buy these from the open end company, is that correct? A. That is correct.

Mr. Fish: No further questions, your Honor.

The Court: All right, Mr. Cohn. Thank you.

**RE-DIRECT EXAMINATION** by Mr. Gregg:

Q. Just one question, if I may. He asked you about a new underwriting and the fact that the sales commission and expense would be included in the new offering price. Could you tell us what happens to the market value of the shares after the shares have been issued? A. After the shares have been issued they, then when the marketing syndicate or the underwriting group is terminated which may be anywhere from an hour to several days later, [Tr. 71] the market value then seeks its own level. It may

*F. Cohn, for Pltf., Re-cross.*

go either up or down. In many cases it could be up four or five points or even double in some cases. It could be down two or three points.

Q. So fair market value is determined by the law of supply and demand after the issuance? A. That is correct, the law of supply and demand.

**RE-CROSS EXAMINATION by Mr. Fish:**

Q. In reference to that—

The Court: Do you mean this would be the underlying shares?

The Witness: We are talking now about individual stock underwriting.

By Mr. Fish:

Q. Right. A. Individual—

The Court: Oh, individual stock underwriting. All right.

By Mr. Fish:

Q. When you say that, of course you assume that those shares have been on the open market? A. When they become on the open market.

Q. Right. A. And the underwriting is over.

[Tr. 72] Q. Then you can negotiate for the purchase of those shares through a broker, is that correct? A. At that point the market value is determined by supply and demand, depending upon how many buyers and sellers.

Q. Then we have the normal, common stock situation where you purchase through a broker, is that correct? A. That's correct.

Q. And negotiation does fit into that concept, is that correct? A. Negotiation only to the point where it is very

close to the actual market value. If the market value is quoted eight to a half, somebody couldn't say "I am going to buy it for three" and expect to get anything, or four or five or six. It has to be in the area of the market, so negotiation would have to be very close to the market or there wouldn't be any business transaction.

Q. You are talking if you were buying a large number of shares you would be talking about concepts of discounts and different values? A. Very likely if you buy a large number of shares you would pay more because you are increasing the demand.

The Court: Thank you, Mr. Cohn. Mr. Gregg, how long will your next witness be?

Mr. Gregg: Just to identify statistics I have put in my brief, your Honor. Maybe [Tr. 73] fifteen or twenty minutes.

The Court: All right. I want to make sure you have enough time. Take about a ten minute break.

Mr. Gregg: Very well, your Honor.

(Whereupon, at 3:40 p. m., a short recess was taken.)

Proceedings: After short recess, 3:58 p. m.

Appearances: As before noted.

Mr. Gregg: Your Honor, my next witness is Assistant Secretary of the three fund companies, Mr. Hartley.

*G. E. Hartley, for Pltf., Direct.*

**GEORGE E. HARTLEY** (6005 Abbott Avenue South, Edina, Minnesota) a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

**Direct Examination by Mr. Gregg:**

**Q.** Mr. Hartley, I identified you as Assistant Secretary of [Tr. 74] Investors Mutual, Investors Stock Fund and Investors Selective Fund. Was I right? **A.** Yes, sir. I am assistant secretary of those funds.

**Q.** I believe you may be assistant secretary of two others, or am I wrong? **A.** Yes, sir. Investors,—in the investors group there are six mutual funds and I am assistant secretary of each of the funds.

**Q.** Do you have any other title? **A.** I am also an employee of Investors Diversified Service, as I am director of funds accounting and service.

**Q.** Fine. Your Honor, in the cross examination of Mr. Cohn I think I misunderstood a question and the answer but as long as Mr. Hartley is here and knows the answer I would like to ask him to clarify the relationship between the funds and IDS, as far as the public offering price is concerned. Who is the buyer and who is the seller and what is their role in this transaction? **A.** Well, the mutual fund is the seller. Investors Diversified is the agent and the shareholder or customer is the buyer.

**Q.** I think he left the inference that Investors Stock Fund, for example, sold the shares to Investors Diversified Service which in turn then sold it to the public, but I don't believe that to be the case. Could you help us with that? [Tr. 75] **A.** No. His statement was incorrect on that point. Investors Diversified Service is an agent and does

not purchase the shares from Investors Stock Fund. It does at no time own those shares. It has a marketing function only.

Q. So that its interest is in this eight per cent load, am I correct? A. Yes, sir.

Q. Now, I asked you to bring along a breakdown of what happens to the load, because in your accounting services, your duties in connection with the allocation of funds inside Investors Diversified Services you should be able to tell us what happens to the load when it gets there. Do you have those figures so that you could give them to us in percentages or explain to us what happens? A. Well, you have those, Mr. Gregg. I can—

Q. This could be identified as an exhibit if the Court would like it. It is relatively short, however. A. Yes, sir.

Q. Now, we are starting with the proposition that—

Mr. Fish: Are you going to use that as an exhibit, Mr. Gregg, to refer to, because I haven't seen it.

Mr. Gregg: Let me let counsel see it here.

Mr. Fish: Your Honor, this makes reference to 1969. I don't believe 1969 is [Tr. 76] relevant in this case.

By Mr. Gregg:

Q. Do you have the 1964 figures? A. They are back with Mr. Delany.

Q. Did you prepare this exhibit, Mr. Hartley, or this document? A. No, sir. That was prepared under the direction of Mr. Ivan Hone, who is Assistant Comptroller for Investors Diversified Services. I questioned him as to



the source of his numbers and that report is a summary directly from the books and records of Investors Diversified Services.

Mr. Fish: What is the gentleman's name?

The Witness: Ivan Hone, H-o-n-e.

Mr. Fish: Did you ask Mr. Hone to make a study or a survey?

The Witness: I asked him for a set of figures on this particular subject, the amount of distribution fees received by Investors Diversified from the various fund companies and the disbursements made from that source of income.

Mr. Fish: Then Mr. Hone was the one who went to the books and records and got these figures?

The Witness: Well, it was done under his direction, [Tr. 77] and I am also,—well, I—

Mr. Fish: Just a minute. Did you do this?

The Witness: No, sir. They were prepared under the direction of Mr. Hone and he explained them to me and—

Mr. Fish: Your Honor, I would suggest that Mr. Hone would be the one qualified or competent to testify to this end result which is the result of his investigation.

The Court: Did you go over this with him?

The Witness: Yes, sir.

The Court: Is it correct?

The Witness: Yes, sir. This came from a report prepared in the comptroller's department of Investors Diversified Service. It is merely a summary.

The Court: All right. I will overrule the objection. Go ahead, Mr. Gregg.

By Mr. Gregg:

Q. Now, you have shown on this for 1963 and 4, but '64 is the year we are concerned with? A. Yes, sir.

Q. Can you tell us from this what disposition was made by IDS of the sales commissions it received during that year, and by item and either amount or percentage?

[Tr. 78] A. Of the total distribution fees, commissions to salesmen amounted to 79.6 per cent. Divisional office fees which are expenses of our, in a distribution system and promotion amounted to 3.3 per cent. Advertising in the news media, publications and so forth, 3.7 per cent; prospectuses, annual reports, two per cent. Other departmental operating expenses, which are salaries and rental expenses allocated rent and so forth of other people in the home office who work on the distribution problem here, which is the back-up for the field force is 7.9 per cent, and miscellaneous, consisting of postage and so forth at 1.5 per cent, are the major items, constituting this.

Q. Does that total the hundred? A. Well, there is—

The Court: Excuse me, Mr. Gregg. Was this marked, this paper?

Mr. Gregg: No, it wasn't, your Honor.

The Court: Will you mark that, please. Let us have it marked. I will mark it in evidence and consider your objections and your motion.

Mr. Fish: Can I make one point, your Honor?

The Court: Yes.

Mr. Fish: This refers to years other than the years in suit. I believe it goes from,—[Tr. 79] what is the first year there?

Mr. Gregg: It goes from '63 to '69.

Mr. Fish: It goes from 1963 through 1969.

Mr. Gregg: It would be perfectly all right, as far as I am concerned, to wipe out reference to the other years.

The Court: Other years, all right. We will just consider it as to '64. It is going to be much more understandable to have it marked.

By Mr. Gregg:

Q. I really have one question in connection with this, your Honor, for the purpose of being,—you have enumerated the percentages. Does any portion of this distribution fee, sales commission, go for management or investment advisory services? A. No. That specific expense is specifically excluded from this allocation of expenses from this source of income. May I add though that I did not complete that list. There are items with very small percentage amounts which I did not read. Among the expenses are state and federal registration fees of .9 per cent.

Mr. Fish: Mr. Hartley, are you adding to that exhibit at this time?

The Witness: No, sir. I am just reading other items.

[Tr. 80] Mr. Fish: I thought you were writing on it.

The Witness: I read the larger percentages first. There is an item of group insurance which is the company's contribution to health and group insurance of .4 per cent; sales promotion literature .9 per cent; sales training expenses .4 per cent; all of which adds up to 100.6 per cent, which means that investors spent more on distribution than it got in fees.

Mr. Gregg: I would like to introduce that in evidence then, your Honor.

The Court: All right. Mark it in evidence subject to your objection and motion.

Mr. Fish: Yes, your Honor.

(Whereupon, a document described as IDS Analysis of Distribution Operations, years 1963-1969, bearing date of 4/1/70, was then received in evidence as Plaintiff's Exhibit Number 10.)

By Mr. Gregg:

Q. Now, Mr. Hartley, as assistant secretary of the corporation [Tr. 81] in charge of financial matters like this, you have to refer to the certificate of incorporation, do you not? A. Yes, I do.

Q. Can you tell us, based on your knowledge of things out there, when the decision was made to have redeemable shares? A. Well, that decision is made at the time the—

Mr. Fish: Your Honor, he hasn't laid a foundation, I don't believe, to establish when this gentleman came to work for this company.

The Court: How long have you been there, Mr. Hartley?

The Witness: I started my term of employment with Investors in 1965.

The Court: When were the funds founded or launched?

The Witness: Well, Investors Stock Fund was incorporated and founded in 1945. Investors Selective Fund in 1945 and Investors Mutual in 1940.

Mr. Fish: Based on that, your Honor, I don't believe he is qualified to testify.

The Court: From your experience in the firm do you know the answer to this?

[Tr. 82] The Witness: Yes, sir.

The Court: I will hear it subject to objection. Go ahead.

The Witness: In the certificate of incorporation which is a, the first document or a very preliminary part in organizing an open end mutual fund we draw up a certificate of incorporation and in that document we specify that we will redeem shares at the net asset value.

By Mr. Gregg:

Q. Are you referring to, this is Plaintiff's Exhibit Number 8. Will you find it in there and tell us the— A. In Article 4, sub-paragraph "C".

Mr. Fish: Your Honor, I submit that the Articles are in evidence and the provisions will speak for themselves if there is any reference to the provisions.

They are in evidence.

The Court: If you want to refer in particular to the one marked there?

Mr. Gregg: Yes, your Honor, and I will just ask one preliminary question.

The Court: It might make it more clear in the record.

[Tr. 83] By Mr. Gregg:

Q. Is one of your duties the determination of the net asset value of the shares and the net asset value per share and the preparation of the financial reports of the company? A. Yes, sir. That is one of my main duties.



Q. Now, isn't it true that Article 4 C there is one of the rules that you have to abide by in your accounting practice? A. Yes, it is.

Q. And would you explain it there from Article "C", so we can see what the connection is here between this and your accounting procedures? A. Well, it states in Article "C" that the registered holder of shares of the company may require the company to redeem the same by delivering to the company at its principal place of business a written request therefore in a form satisfactory to the board of directors and the company upon receipt of such request and the surrender for redemption of the certificate or evidence of ownership of such stock at its principal place of business properly signed or endorsed shall pay promptly to or upon the order of the registered holder thereof the redemption price thereof. Shall I continue?

Q. No, and then the next paragraph says that it must be the net asset value per share, isn't that correct? A. Yes.

[Tr. 84] Q. And you are the person that determines, you are the person in charge of the accounting to determine net asset value per share? A. Yes, sir. That is all done under my direction.

Q. All right. Now I wish you might explain one other thing in connection with that certificate of incorporation. You will find dates in the right-hand margin. What do they signify, opposite certain paragraphs? A. Well, those dates signify that the paragraph was amended on that particular date.

Q. You can take this one.

There is no question to testify

Mr. Fish: The Government, your Honor, will stipulate that what is contained in the right-hand paragraphs here is apparently references to the date that the article was amended. That is what Mr. Gregg is saying.

By Mr. Gregg:

Q. Yes, and I have only one other thing. If no date appears opposite a paragraph does that mean that that has never been amended since the certificate of incorporation was drawn? A. Yes.

Q. Thank you. Now, do you know, based on your experience out there, when the certificate of incorporation is filed [Tr. 85] in relationship to the registration of the company with the Securities and Exchange Commission? A. Well, this certificate of incorporation precedes the registration with the Securities and Exchange Commission.

Q. Would you explain that? A. Well, it is necessary for a company to be incorporated and to have, well, a certificate of incorporation before it can apply for a registration before the Securities and Exchange Commission.

Q. Thank you. Now, do you know of any public market in which the estate of Ethel Bennett or any similar estate in 1940 could have—

Mr. Fish: Your Honor, I don't believe there is anything in the record to indicate he is qualified to so testify.

The Court: Isn't that almost agreed, there is no public market? There isn't any, is there, that you know of?

The Witness: No, sir, I don't know of any.

Mr. Fish: Your Honor, it doesn't make any difference, but I don't want to get into this area. He is an accountant.

The Court: I wouldn't sustain it for that. I will listen to it. There isn't any, is there?

[Tr. 86] The Witness: No, sir, there is not.

By Mr. Gregg:

Q. Just to clarify one matter, you said you were assistant secretary of six corporations? A. Yes, sir.

Q. It is called to my attention that three of them are incorporated since you have been there, is that correct? A. Yes, sir.

Q. Which ones are they? A. That would be Investors Variable Payment Fund, Incorporated; IDS New Dimensions Fund, Incorporated, and IDS Progressive Fund, Incorporated.

Q. And you are assistant secretary of all those and have been from the beginning? A. Yes, sir.

Q. Did you handle the accounting work for them too? A. Yes, sir.

Mr. Fish: Your Honor, I don't mean to keep objecting, but these companies are not even subject to this litigation.

The Court: I know that.

Mr. Fish: They are not in suit. We are getting way off the beaten track.

The Court: All right.

Mr. Gregg: Now, did you have people in your department prepare for you,—well, I [Tr. 87] will have this marked as an exhibit

(Whereupon, a document described as Indicating the Total Number of Shares Redeemed and the Total

Number of Shares Sold, was then marked as Plaintiff's Exhibit Number 11 for identification.)

By Mr. Gregg:

Q. Can you tell me what this represents, what it contains? A. This is a report made showing the total number of shares redeemed and total number of shares sold by Investors Stock Fund, Incorporated, Investors Mutual, Incorporated, Investors Selective Fund, Incorporated, for the years 1963 through 1969.

Q. How is it prepared and who prepared it? A. This report was prepared under my direction. It is taken directly from the books and records of the respective fund companies.

Mr. Gregg: I would like to offer it in evidence, your Honor.

Mr. Fish: No objection.

The Court: No objection. It may be received in evidence.

[Tr. 88] (Whereupon, a document described as Indicating the Total Number of Shares redeemed and Total Number of Shares sold, previously so marked for identification, was then received in evidence as Plaintiff's Exhibit Number 11.)

Mr. Gregg: That is all. Your witness.

The Court: All right.

Mr. Gregg: May I resume just a moment?

Mr. Fish: Sure.

(Whereupon, a document described as Containing the Heading "Investors Stock Fund", was then marked as Plaintiff's Exhibit Number 12 for identification.)

By Mr. Gregg: and also that it was prepared by you?

Q. Mr. Hartley, I show you Exhibit Number 12 and ask you if you could tell us what this is and how it was prepared? A. This is a summary of the shares sold and redeemed by Investors Stock Fund, Incorporated, for each of the fiscal years beginning in 1963 through 1969, and it was prepared under my direction and I inspected the numbers and [Tr. 89] compared them to books and records of the Investors Stock Fund, Incorporated.

Mr. Gregg: I would like to have, may I examine the witness concerning this?

The Court: Surely.

By Mr. Gregg:

Q. Now, you have roughly total shares sold? A. Yes, sir.

Q. The total amount from the reinvestment dividends and capital gains distribution? A. Yes, sir.

Q. And then you have one called fund transfers and then the other asset value and public sales? A. Yes, sir.

Q. Now, would you explain to us what reinvest dividends means so that we can best understand this exhibit? A. When the fund company distributes income or capital gains to the respective share holders it offers to accept the amount of money back for the purchase of shares at net asset value. In effect, the dividends are reinvested in additional shares of the fund.

Q. Now, I notice in your exhibit that you have percentages. Is it correct that 12.66 per cent of the total shares sold are reinvestments of cash dividends and capital gains distribution? [Tr.90] A. Yes, sir, for the year 1963, yes, sir.

(Whereupon, a document introduced as indicating the Total Number of Shares Redeemed and the Total



Q. '63. Let's go to '64. A. The amount of reinvested dividends in that year was 31.13 per cent of the total shares sold.

Q. So these are shares sold by the company at net asset value, is that correct? A. Yes, sir.

Q. Now, fund transfers, what does that mean? A. That is the amount of shares issued after a shareholder in another fund in the investors group liquidates his shares in the other fund and the proceeds is used to purchase shares in Investors Stock Fund at net asset value.

Q. So these are also sold at net asset value, correct? A. Yes, sir, they are.

Q. Now, asset value and public sales, what are those? A. Those are the number of shares that were sold as a result of solicitations and to employees and officers of the company.

Q. Now, these public sales are at, how are they computed here? Those are at net asset value? A. Those shares are the result of the net amount going to the Fund after the sales charge has been deducted.

Q. Now, percentage wise in 1964, 31.13 per cent of sales consisted of reinvestment of dividends at net asset value, correct? [Tr. 91] A. Yes, sir.

Q. 11.69 per cent of sales were as a result of transfers of shareholder from one fund to another at net asset value? A. Yes, sir.

Q. And 57.17 per cent is either to the public or to employees? A. Yes, sir.

Q. What percentage of that, roughly, would be to employees or their pension funds? It would be relatively small, wouldn't it? A. Yes, it would.

*G. E. Hartley, for Pltf., Cross.*

Mr. Gregg: All right. That is all the testimony I want.

The Court: This offered in evidence. You don't object?

Mr. Fish: No, your Honor.

The Court: All right.

Mr. Fish: The only objection I would make, it does contain figures which go beyond the year at issue, '64. If I understand, Mr. Gregg, that doesn't give you any particular trouble.

The Court: You agree the figures after '64 or not—

Mr. Fish: And the '63 figures.

The Court: Are not to be considered.

[Tr. 92] (Whereupon, a document described as bearing the heading "Investors Stock Fund", previously so marked for identification, was then received in evidence as Plaintiff's Exhibit Number 12.)

#### CROSS EXAMINATION by Mr. Fish:

Q. Mr. Hartley, on this Exhibit 11 I note that the number of shares sold in Investors Stock Fund, Inc. is, as of 10-31-64, is said to be 12,752,286, correct? A. Yes, sir.

Q. Now, if I understand correctly, were all of those shares sold at public offering or asked price? A. No, sir. That represents the total of all sales, reinvested dividends, fund transfers into the fund, sales at public offering and asset value sales, a total of all of them.

Q. Okay. The number of shares redeemed was 4,692,590? A. Yes, it was.

Q. Now, that means that that is the number of shares which the company redeemed, is that correct? A. Yes, sir.

Q. Now, to your knowledge was there any other, were any of these shares during this year sold at other than by the redemption method? A. I am sorry. I don't understand your question.

[Tr. 93] Q. All right. These shares were redeemed, is that correct? A. Yes, they were.

Q. Do you know of any other type of transfer sales as to these shares for that year? A. Well, that number of shares redeemed represents cash redemptions of the fund shares. Now, they could either represent cash paid to the redeeming shareholder or it could be that this was the cash value of the number of shares redeemed that is on the other side of the transfer going into another fund, but it represents in either event a cash redemption of this particular stock and is the total activity for that particular year.

Mr. Fish: Thank you very much, Mr. Hartley.  
I have no further questions of Mr. Hartley.

The Court: Mr. Hartley, thank you very much.

Mr. Gregg: I believe that concludes our case, your Honor.

The Court: Plaintiff rests. Do you have any testimony?

Mr. Fish: No, your Honor.

The Court: The Government rests.

Mr. Fish: Yes, sir.

. . .

**District Court Judgment**

[Caption omitted.]

[Filed April 16, 1971]

The Court, Honorable John T. Curtin, District Judge, presiding, having considered the evidence and the arguments of counsel, and having entered its findings of fact and conclusions of law herein, it is in conformity therewith:

**ORDERED**, that plaintiff have judgment against defendant for the principal amount of \$2,699.41, with interest thereon at six percent according to law, together with costs as provided by law.

**DONE IN OPEN COURT** at Buffalo, New York, this 16 day of April, 1971.

.....  
**United States District Judge.**

**SUPREME COURT OF THE UNITED STATES**

**No. 71-1665**

**UNITED STATES, PETITIONER**

**v.**

**DOUGLAS B. CARTWRIGHT, AS Executor of the  
Estate of ETHEL B. BENNETT.**

**ORDER ALLOWING CERTIORARI. Filed October 10, .....,  
1972.**

**The petition herein for a writ of certiorari to the United  
States Court of Appeals for the Second ..... Circuit  
is granted.**